

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE CRAIGIE and BARBARA CRAIGIE,

Plaintiffs,

v.

File No. 1:15-CV-441

NATIONSTAR MORTGAGE, LLC, a
limited liability company; and
JOHN DOES 1-5, unnamed individuals,

Defendants.

Hearing re: Motions to Compel Discovery

Before

THE HONORABLE ELLEN S. CARMODY
United States Magistrate Judge
June 15, 2016

APPEARANCES

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P R O C E E D I N G S

THE CLERK: The Court calls case 1:15-CV-441,
Craigie, et al., v. Nationstar Mortgage, et al.

THE COURT: Good morning. Counsel, would you please
put your appearances on the record?

MR. WESTBROOK: Good morning, Your Honor. Theodore
Westbrook on behalf of the plaintiffs.

THE COURT: Good morning.

MS. BAUCUS: Laura Baucus, Your Honor, on behalf of
Nationstar.

THE COURT: Good morning.

MS. LINTMUTH: Elisa Lintemuth, Your Honor, on
behalf of defendant Nationstar Mortgage.

THE COURT: Good morning.

This matter is before the Court on three motions, I
believe. The first is plaintiffs' motion to enforce discovery
order, to compel discovery, and for sanctions. That's docket
70, number 70. And then there is -- I've reviewed that. I've
reviewed the response and then there was a reply, I believe,

1 filed pursuant to motion. And then defendants' motion to
2 compel, that's docket 80, and I've reviewed that and the
3 response, and I believe there was late yesterday a motion to
4 file a reply brought by defendants, I think.

5 MS. BAUCUS: Correct, Your Honor.

6 THE COURT: And I'm going to allow that motion to
7 reply since I've already read it, so I don't see any reason to
8 deny it. Oh, that's a motion for leave to file a reply and a
9 sur-reply in opposition to plaintiffs' third motion to compel,
10 and that would be docket 98.

11 I have reviewed the parties' pleadings in this
12 matter. I went back and I reviewed the First Amended
13 Complaint and the Case Management Order, and first of all, it
14 appears to me that you're way beyond the discovery deadline
15 unless there was another amendment that I missed. Mr.
16 Westbrook?

17 MR. WESTBROOK: Your Honor, the discovery period
18 ended --

19 THE COURT: January?

20 MR. WESTBROOK: -- at the end of April.

21 THE COURT: Oh, April? Did I extend it, then?

22 MR. WESTBROOK: I believe so, Your Honor.

23 THE COURT: Okay. All right. And then this was --
24 I assume that what you're going to tell me, Mr. Westbrook, is
25 that you took the third-party -- the 30(b)(6) deposition and

1 that's why you were beyond the deadline?

2 MR. WESTBROOK: Yes, Your Honor. We reached out to
3 Nationstar's counsel about some issues with the deposition
4 itself and with some document discovery issues that were
5 raised during the deposition just after the deposition took
6 place and just at the end of the discovery period. I want to
7 say April 29th is when we brought these issues up, and we
8 filed our motion as soon thereafter as we could after having
9 done our meet and confer obligations.

10 THE COURT: Okay. Now, who is going to speak to the
11 motion to compel on behalf of Nationstar?

12 MS. LINTEMUTH: I am, Your Honor.

13 THE COURT: All right. I'm puzzled here because as
14 I understand it, one of plaintiffs' contentions is that there
15 was an affidavit filed and that there are documents that do
16 exist that were not produced previously. I really don't
17 understand what your position is on that. Do the documents
18 exist and you say they're not relevant or do they not exist?

19 MS. BAUCUS: I'm sorry, Your Honor. To clarify, I'm
20 arguing in response to plaintiffs' motion to compel. Elisa is
21 doing our motion to compel. Sorry.

22 THE COURT: Okay. All right. So what's the status
23 of things? Do they exist and you claim they're privileged or
24 do they not exist?

25 MS. BAUCUS: The documents which plaintiffs are

1 claiming exist do not exist, never have existed. We submitted
2 an affidavit which state they don't exist. Our 30(b)(6)
3 witness testified they don't exist. There was no -- this
4 motion is based on a mischaracterization of that testimony.

5 I mean, what prompted this motion in our opinion are
6 two things, Your Honor, the motion to compel filed by
7 plaintiffs. There was a series of documents Nationstar
8 produced that counsel, myself, did not know prior to this
9 lawsuit even being filed. So these are documents that
10 plaintiffs have had well over a year, and it's the subject of
11 our motion to compel. We weren't aware that this separate
12 production had been made. Somehow Nationstar produced it. It
13 wasn't subject to the typical attorney review that would
14 happen and the appropriate redactions weren't made,
15 attorney-client privilege redactions weren't made, and one of
16 those documents is a HAMP certificate which opposing counsel
17 and plaintiffs have had for well over a year.

18 Now, Your Honor, there have been two motions to
19 compel, two sets of discovery where plaintiffs have said, you
20 know, I see this document's referenced in Nationstar's
21 servicing notes. I see this document, this document, this
22 document, claimed documents, but they're not. They're just
23 terms of art used by Nationstar. Never once was HAMP
24 certification document referenced, never once. When we had
25 that motion here where Nationstar submitted an affidavit, that

1 wasn't it. Never once.

2 It was sort of subterfuge waiting to this deposition
3 saing, Here's this document you've claimed never existed. No,
4 never once in discovery did you ask about this document. Had
5 you done so, we would have done our due diligence, followed up
6 with our client, and confirmed for you this is subject to
7 attorney-client privilege.

8 THE COURT: Okay. Let me just interrupt if I may
9 because I don't want to lose track of my questions. I
10 reviewed the Amended Complaint again and it seems to me that
11 plaintiffs are saying that they were attempting to cooperate
12 with an attempted loan modification.

13 And just let me say whether Regulation X applied or
14 not, I'm not concerned with that right now. I mean, I'm not
15 prepared to decide that. That as I understand may be subject
16 to your pre-motion conference request.

17 Now, it seems to me two things are very relevant.
18 One is Nationstar's policies regarding what documents are
19 required for a loan modification request because as I
20 understand it your defense is that it was never completed or
21 it was never even started is my understanding. And then it
22 also seems very highly relevant to me what documents plaintiff
23 had actually provided to you. Now, are either of those topics
24 subject of this motion to compel?

25 MS. BAUCUS: These are -- this is the exact topic of

1 plaintiffs' motion to compel, and I'm glad you asked it so I
2 can respond to it. There's two separate loan modification
3 applications or loss modification applications at issue here.
4 One I'll call it 2013; one I'll call it 2014. And though I
5 understand your position is that our argument the regulation
6 doesn't apply, Regulation X does not apply is something for
7 Judge Neff during the pre-motion conference, I do need to
8 raise it here again because their whole argument is we have
9 to -- you know, we need to see your policies because your
10 policies will show us that you violated Regulation X. The law
11 is clear in this jurisdiction Regulation X does not apply in
12 2013. So this is -- it's a wild goose chase. Our third
13 motion to compel on these proprietary confidential -- you
14 know, our procedures, and the law doesn't even apply.

15 THE COURT: Wait a minute. Just a minute. Just a
16 minute. Are you suggesting to me that if I become an employee
17 at Nationstar Mortgage and I'm being asked to process loan
18 modification requests, that the list of documents that is
19 required is proprietary?

20 MS. BAUCUS: No, I am not saying just the list.
21 They've asked for the entire policy. But if you want to see
22 the list of documents, that is identified in the letters we
23 sent to plaintiffs.

24 Now, first of all, the 2013 modification request,
25 plaintiffs admit they sent nothing. So this wild goose chase

1 to see what do our policies say, they admit they sent nothing,
2 so what does it matter? They sent an e-mail with a TIF
3 document. They admit this in their deposition. Nationstar
4 responded. The letter said send it fax or mail --

5 THE COURT: I read that.

6 MS. BAUCUS: -- but we can't open a TIF document.
7 Send it PDF. They admit they never sent a PDF. How can
8 Nationstar ever do an evaluation of anything without
9 anything? They never sent anything. What does it matter?

10 THE COURT: What I'm suggesting to you is that I'm
11 not here to decide the substance of this case. I'm here to
12 decide whether things are relevant, do they exist, have they
13 been produced, okay? And I understand your argument. I
14 understand your frustration.

15 But I still go back and ask you do you have policies
16 that were in place that regardless of Regulation X and whether
17 it applies or doesn't apply -- I know you cited a West
18 Michigan case. I don't know that Judge Neff is going to
19 follow that. I don't know that she has to follow that. I
20 don't know the answer to that, okay? Don't know the
21 answer right now. But what I do know is that it seems to me
22 that what was required at the time they were applying is very
23 relevant and what they sent or didn't send is also very
24 relevant to the facts in the case.

25 MS. BAUCUS: And the record already shows both those

1 things. In both instances, 2013 modification application,
2 2014, there were very specific letters sent to plaintiff
3 saying this is what you have to send, notably income support.
4 Obviously you can't do a loan modification. Nobody disputes
5 that. Plaintiff admits those were sent. For 2013
6 modification they sent nothing. They have the letter the
7 application says we have to send. They admit they sent
8 nothing. They didn't follow the procedures to send it, and
9 Nationstar said, Send it in a PDF. They never did. That's
10 not in dispute.

11 For the 2014 application, the HAMP application
12 modification, there's a letter dated February 21, 2014, stated
13 exactly what you have to send or send in. It stated it. They
14 knew it. It was income support. They sent it in. They admit
15 this is the body of documents we sent in. They admit no, this
16 body of documents is not everything asked for in that February
17 21st letter. There's absolutely no dispute about those two
18 things.

19 THE COURT: Well, I --

20 MS. BAUCUS: So what else are they looking for
21 here?

22 THE COURT: I'm asking you what are they looking
23 for. Do you have a list of your policies somewhere? Well,
24 let me ask Mr. Westbrook. I'll get back to you.

25 MS. BAUCUS: Thank you.

1 THE COURT: What is it you're looking for? Because
2 I have to tell you I've read all your briefs and I've spent a
3 considerable amount of time on this, and I'm not sure what it
4 is really you are --

5 MR. WESTBROOK: Well, Your Honor, what we keep
6 running into when we look for documents, we look for documents
7 that we've learned about as a result of the production of
8 the -- what Nationstar calls the LSAMS notes. That's all they
9 want to produce to us. They don't want to produce anything
10 else to us. They say everything relevant is in there.

11 Well, there are all these other document systems
12 that contain information that's relevant to these loans, how
13 these loans were handled, how the foreclosure was handled, how
14 the modification requests were handled. There are document
15 systems that include a wealth of information about those
16 things that are relevant to our claims, particularly our FDCPA
17 claim and our RESPA claim, and they don't want to produce
18 those. They say, Well, everything relevant is in the LSAMS
19 notes. Everything in the Remedy system, the GameChanger
20 system, the Filenote system --

21 THE COURT: What documents -- how would you label
22 the documents that you think are relevant and they have not
23 produced and exist?

24 MR. WESTBROOK: The testimony of their 30(b)(6)
25 witness was that there's a system called Remedy that includes

1 the inputs into the modification system that Nationstar has.
2 So that will show what financial information was obtained from
3 the plaintiffs in connection with their modification requests.

4 THE COURT: And your request is simply for the
5 plaintiffs' two loans in this matter?

6 MR. WESTBROOK: Exactly right, Your Honor, and I
7 think it's very relevant. I don't think it would be
8 burdensome or difficult for them to produce it, and that's one
9 item.

10 There's also an entire other document system called
11 LPS that apparently is used in some way in connection with
12 preparing files for foreclosure. There's information and
13 there's testimony, 30(b)(6) testimony on this, that that
14 information is going to be specific to the plaintiffs' loans
15 as well, and we're not looking for anything related to other
16 loans. We're looking for information that's specifically
17 related to these two loan numbers, these two account numbers.
18 And it wouldn't be hard to produce.

19 Well, why doesn't Nationstar want to produce it? I
20 don't know. But it will be relevant in one way or another.
21 Either it will be consistent with what the LSAMS notes says,
22 in which case Nationstar is right, there's no additional
23 relevance to this information beyond what's in the LSAMS
24 notes. I can't make that decision without seeing those
25 documents or at least knowing what's in them.

1 And this claim of privilege, there's a claim of
2 privilege running through all the LSAMS information. In fact,
3 what I asked their witness is there any factual information
4 contained in the LSAM -- in the LPS system, rather, is there
5 any factual information contained in that, is it used in-house
6 by Nationstar, I got instructions not to answer. Everything
7 in LPS is privileged. Well, why isn't any of it on a
8 privilege log? The answer is Nationstar just doesn't want to
9 produce it. They don't want us to know what's in there. And
10 I think that's going to show that there's more information
11 there that's not been made available to us yet and it's
12 different from what's been provided to us so far.

13 THE COURT: Okay. Thank you.

14 Yes?

15 MS. BAUCUS: May I respond, Your Honor? Again,
16 there's been no information, nothing, no testimony what
17 exactly it is they're looking for. LPS --

18 THE COURT: He just told you. Wait a minute. I
19 take issue with that. He just told you. Now, if you can tell
20 me there's some reason that you shouldn't have to produce it
21 or it doesn't exist, I'm all ears.

22 MS. BAUCUS: My apologies. Correction, there's been
23 no specific information he believes that are in these systems
24 that is relevant to the case.

25 LPS, this is the attorney-client privileged

1 communication system between Nationstar and its foreclosure
2 counsel. This is a system used, you know, throughout the
3 industry for the same purpose. Mr. Westbrook practices this
4 type of law. We practice this type of law. It's not unusual.
5 There was a privilege log that referenced LPS notes being
6 redacted. That was something we produced way back last year.
7 There was no objection.

8 This is nothing new. LPS is not a, you know,
9 gotcha. This is an attorney-client privileged system. That's
10 how foreclosure counsel and Nationstar can communicate whether
11 foreclosure -- attorney-client privileged information about a
12 foreclosure, you know, without saying more.

13 THE COURT: Have you produced the LPS materials
14 relevant to these two loans redacted or not produced them?

15 MS. BAUCUS: We have not, absolutely not.

16 THE COURT: Because your claim is that they're all
17 privileged?

18 MS. BAUCUS: They are. In fact, this HAMP
19 certificate that, you know, wa-la, they thought they got us
20 producing it that they've had well over a year before the
21 deposition that we didn't know about, that's part of LPS.
22 That's why our witness wasn't familiar with it in connection
23 with this lawsuit because it was not, you know, a deposition
24 about attorney-client privileged information. So there should
25 not be a dispute about LPS. I don't know where this dispute

1 has come from, but it is attorney-client privileged.

2 Remedy, this is a system that houses and summarizes
3 financial information submitted by the borrower. And again,
4 it is not something -- I attest to you, Your Honor, the
5 undisputed testimony here, there's no dispute about what the
6 borrower sent in. There's no dispute.

7 THE COURT: No, I am not -- I've already told you
8 I'm not buying that argument, okay? If it's information that
9 is sent by them and you say there's nothing there, well,
10 that's good for you. But he doesn't have to take your
11 position as fact in the discovery process.

12 MS. BAUCUS: Your Honor, we're using their own
13 deposition testimony we're citing. It's not our position.
14 It's their client's testimony.

15 THE COURT: All right.

16 MS. BAUCUS: But it's not -- you know, LSAMS, the
17 system notes, the central nervous keeping which we produced,
18 every contact with the borrower is imprinted on there. That's
19 what Nationstar uses for its own purposes. That's what we
20 produced. That's what's produced in all cases.

21 Remedy summarizes some financial information, but
22 it's not a system that you can hit a button and print it. In
23 fact, I don't even know how you could produce it. It is a
24 system on a computer. That's something we would have to look
25 into. I don't know if you take a snapshot. It's something an

1 IT person would have to do.

2 But saying that this is easy, it wouldn't be hard,
3 there's no burdensome -- weighing the proportionality is
4 something that is relevant here. We have over a thousand
5 documents produced, seven hours of deposition testimony, and
6 again, it's something that can't prove anything when his
7 client admits what they sent in.

8 THE COURT: Well, maybe they're mistaken about what
9 they sent in. I mean, I'm just telling you I read the Amended
10 Complaint today and it sounded crazy-making. I mean, I don't
11 know if it's true, not true. That's not my decision to make.
12 But it sounded like crazy-making with all the alleged facts
13 going back and forth and they contacted us and then they said
14 our stuff is out of date and then blah-blah-blah. I mean, it
15 just sounded crazy-making.

16 MS. BAUCUS: Well, I don't quite know how to respond
17 to that.

18 THE COURT: I'm sure you don't, but I'm just
19 being --

20 MS. BAUCUS: But with regard to the Amended
21 Complaint, obviously our job is to ferret that out.

22 THE COURT: I understand.

23 MS. BAUCUS: And the testimony, they are -- their
24 testimony is what it is, what it is, and it's consistent with
25 what our facts show. You know, they sent in what they admit

1 they sent in, and they just didn't send in the information and
2 they have a history of that.

3 They're not claiming that there's other information
4 that they sent in that we're not acknowledging. That's the
5 issue that I'm having difficulty with. I feel like this is a,
6 you know, fishing expedition. There's not -- it would be
7 different if Mr. Westbrook came in here and said, My client
8 said they produced this document and this document and this
9 document. There's none of that here.

10 THE COURT: Um-hum. I got it.

11 MS. BAUCUS: So that is our concern. Again, and
12 not -- I want to make sure I'm not waiving the rights of
13 confidentiality and propriety because these are Nationstar's
14 policies.

15 THE COURT: Okay. All right. Got it.

16 MS. BAUCUS: If you have any further questions, Your
17 Honor?

18 THE COURT: No, I'm ready. I'm ready.

19 MS. LINTEMUTH: I just want to clarify one quick
20 thing, Your Honor.

21 THE COURT: All right.

22 MS. LINTEMUTH: Because I was the one who did the
23 privilege log. The LPS entries that were navigated into the
24 LSAM notes were redacted and we did produce a privilege log in
25 connection with those. But we learned at the 30(b)(6)

1 deposition that plaintiffs already had an unredacted version
2 of the LSAMS notes, so they do already have some of that LPS
3 information.

4 MR. WESTBROOK: Your Honor, can I just briefly, very
5 briefly address the privilege issue?

6 THE COURT: Please, very briefly.

7 MR. WESTBROOK: I apologize, Your Honor, but it's
8 important, just a window into what Nationstar thinks is
9 privileged.

10 The LPS system apparently housed this HAMP
11 foreclosure certificate document which is attached to our
12 motion as Exhibit 7. They say that's privileged. Well, it's
13 not to an attorney. Doesn't say anything about legal advice.
14 Doesn't appear to be confidential. It's in their LPS system,
15 apparently.

16 They're saying every single thing in the LPS system
17 is privileged. That's why this wasn't produced. Well,
18 there's no privilege log. There's no indication that any of
19 that stuff is actually privileged. Thank you, Your Honor.

20 THE COURT: All right. I have a question for you,
21 Mr. Westbrook. What is the status of these two properties
22 right now? Are your clients still in possession of them?

23 MR. WESTBROOK: Well, the property in Muskegon which
24 is called the Scenic Drive property, the redemption period has
25 been equitably extended on that property, and so there's an

1 open but stayed lawsuit in Muskegon County Circuit Court. So
2 I guess I would say there is a sheriff's deed out there on
3 that property, but --

4 THE COURT: But it's been stayed?

5 MR. WESTBROOK: But it's been stayed, and so the
6 plaintiffs are still in -- they still own that property. The
7 redemption hasn't expired. It's my understanding that they
8 are preparing to attempt to redeem that property and that's in
9 process.

10 THE COURT: Okay.

11 MR. WESTBROOK: The Lake Drive property that's here
12 in town, that property, it was past redemption at the point
13 where they started having legal counsel advise them on these
14 issues, and there have been a lot of legal proceedings having
15 to do with that property which there's just recently been an
16 argument in front of the Michigan Court of Appeals on whether
17 they can regain property rights in that property, and I think
18 we're awaiting a decision from the Court of Appeals on that.

19 THE COURT: All right. Now, do they still live in
20 the Lake Drive home?

21 MR. WESTBROOK: Yes, they do, Your Honor.

22 THE COURT: All right. Have they been doing
23 anything to escrow their payments on the note or anything like
24 that?

25 MR. WESTBROOK: There are -- there is an escrow

1 arrangement that was put into place by the district court that
2 entered the eviction order. There's been eviction proceedings
3 and so forth. That's all sort of on hold while they wait for
4 the Court of Appeals to decide.

5 THE COURT: Okay. All right.

6 MS. BAUCUS: A couple seconds, Your Honor?

7 THE COURT: Go ahead.

8 MS. BAUCUS: I would be remiss if I didn't add we
9 don't believe that sanctions are appropriate here and my
10 clients acted in good faith. If you have any questions with
11 regard to that, I'd be happy to answer that.

12 THE COURT: Okay. All right. I'm prepared to rule
13 on this.

14 First of all, I want to make this very clear that I
15 am not extending the pre-motion conference filing deadline or
16 the request for pre-motion conference filing deadlines, and I
17 think I'm crazy to allow this to go on so long after the
18 discovery period ended. But I'm denying sanctions and I am
19 going to order that with regards to these two specific loans
20 that are at issue in this case, that the motion is
21 granted as to the Remedy documents. Now, you say you don't
22 even know if you can print them, but I would expect some IT
23 genius could figure out how to make that happen, and this is
24 limited to these two loans.

25 It's denied without prejudice as to the LPS loans

1 because I don't have the sufficient information to know
2 whether a privilege was properly claimed or applied because
3 the parties didn't really brief that. So that is my ruling on
4 plaintiffs' motion to compel.

5 In terms of the motion to compel brought by the
6 defendants, I would say this. I'm going to grant that motion
7 insofar as defendant -- plaintiff wants to rely on any
8 information at the trial of this matter that is not in those
9 interrogatory answers. In other words, compensatory damages,
10 if you're going to claim those, you need to lay it out what
11 you're going to claim and on what basis.

12 And the same would go for witnesses, obviously. If
13 you don't know what a witness is going to testify to, I would
14 suggest that you amend those answers to include your known
15 witnesses and a summary of their testimony, and if you know
16 the topics that you think other witnesses will testify to,
17 that you do the best you can with that. Otherwise, if I
18 were -- if I were the trial judge on this and you had not
19 given me more information in your interrogatory answers, I'd
20 start thinking about cutting and slashing your proofs. I'm
21 just telling you. So I would go back through those.

22 And it's granted in part and I think that the
23 defendants are entitled to know the factual basis for your
24 claims. At some point you're going to have to cough these up
25 eventually anyway. So it's granted insofar as my comments --

1 consistent with my comments on the record and denied
2 otherwise.

3 MR. WESTBROOK: Your Honor, could I ask for a
4 clarification of your ruling?

5 THE COURT: Absolutely.

6 MR. WESTBROOK: You mentioned the Remedy documents,
7 which I appreciate the Court's ruling on that. I think the
8 flip side of the Remedy documents is the policy and procedure
9 documents related to the types of modifications at issue with
10 respect to the Lake Drive loan.

11 THE COURT: Well, see, I'm not so sure I agree with
12 that because it seems to me that what's relevant is what was
13 requested, what documents were requested and were they
14 produced and was the request or the failure to act in
15 violation of law? I mean, but I don't see how -- A, B, and C
16 happened. Either A, B and C violates the law or it doesn't.

17 MR. WESTBROOK: Yes. Your Honor, what I'm
18 interested in and I think what the Remedy documents get us to,
19 the Remedy documents show us what information Nationstar had.
20 The policy documents show us what information Nationstar
21 internally says it needs in order to evaluate a modification.
22 So it may not be exactly the same as what they said we want,
23 you know, what they've told plaintiffs we want to see this
24 information. It may or may not actually be needed according
25 to their internal policies to evaluate the modification

1 requests.

2 THE COURT: What about Ms. Baucus's response that
3 you have letters laying out what documents they have
4 requested? Either that's a violation of law or it's not.

5 MR. WESTBROOK: And, Your Honor, I think it actually
6 shows a violation of the law, particularly FDCPA which relates
7 mainly to misrepresentations in connection with collection of
8 debts if they're saying we can't evaluate this because we need
9 more documents when in fact they really don't need more
10 documents. We can't see that without seeing both their
11 request for more documents and what their internal policy says
12 about what documents they need.

13 THE COURT: All right. Ms. Baucus, let me hear from
14 you on that point.

15 MS. BAUCUS: This is a new theory, Your Honor, so
16 with regard to responding, and I know you're not here to
17 decide the law, but again --

18 THE COURT: I'm here to decide the law, but not the
19 case.

20 MS. BAUCUS: Exactly. But Nationstar is entitled to
21 request documents that it needs to evaluate a modification,
22 and it told plaintiff what it is. This theory that somehow
23 the FDCPA relates to its internal policies, there's zero law
24 that supports that, and if there had been any inkling, it
25 would have been cited in his brief. He's a very good brief

1 writer. He's written three briefs at this point. That is a
2 newly-created argument at this point. The FDCPA --

3 THE COURT: I think you quoted a Michigan Court of
4 Appeals case to that effect, did you not? Did you not cite a
5 Michigan Court of Appeals case for the proposition that the
6 policies are not relevant?

7 MS. BAUCUS: We did. I'd say --

8 THE COURT: That's what I meant, you.

9 MS. BAUCUS: Yes, we cited that. But with regard to
10 this theory plaintiffs have now that it's somehow relevant to
11 the FDCPA claim, I've never heard that before. It simply is
12 not. The FDCPA claim by the pleadings relates to
13 misrepresentations made with regard to the sheriff's sale. It
14 doesn't have to do with alleged misrepresentations in our
15 letter that says we need X, Y, and Z and they didn't return
16 it.

17 THE COURT: Okay. I think I started out with this
18 question, and one thing I'm troubled by, and I'm guessing that
19 Mr. Westbrook is troubled by as well, is that this doesn't
20 seem to me to be information that is like highly
21 confidential. If you're going to have a new employee come on
22 board and say, Okay, this is the policy, this is what we
23 require before we will consider a loan modification
24 application, it doesn't seem particularly secret to me.

25 MS. BAUCUS: If you're talking about a very narrow

1 list of we require these documents, you know, that list is
2 quite frankly going to be on the letter sent out saying this
3 is what we need.

4 THE COURT: You say that, but he wants to make sure
5 that you're accurate.

6 MS. BAUCUS: But an entire policy saying this is
7 how, you know, sometimes -- I'm not representing this policy
8 in general, but this is how you talk and this is what you say
9 and, you know, check this box or that box or this box, that is
10 how Nationstar operates. It generated that. It paid money to
11 do that. You know, this is how the company operates. It's
12 confidential, proprietary information. It's systems. That's
13 how it conducts its business.

14 You know, having to turn over an entire policy
15 that's, you know, again not relevant, doesn't have any basis,
16 especially in light of the Court of Appeals saying policies
17 aren't relevant to the violation of the law. I mean, policies
18 aren't relevant. It is what it is.

19 THE COURT: Right. But what about his point that if
20 you have a -- if you have a Fair Debt Collection Practices Act
21 claim and they're saying we need A, B, and C and really your
22 policy says we only need A and B, why is that not relevant?

23 MS. BAUCUS: Two things. A, again, fishing
24 expedition/wild goose chase. The law we cited shows every
25 communication with regard to a loan is not debt collection.

1 So clearly a communication that says, you know, you want a
2 loan modification, this is what we need, that's not debt
3 collection. They make it --

4 THE COURT: Now you're asking me to decide the
5 substantive law in the context of a discovery dispute.

6 MS. BAUCUS: Well, I appreciate that except that
7 when we get to the third motion to compel, we're working in
8 good faith. You know, thousands -- hundreds of hours, and I
9 wish I was exaggerating, trying to dig through, you know,
10 clarify your claims. What is it you want exactly? There's
11 got to be a line where --

12 THE COURT: He's been asking for these policies from
13 the very beginning because I remember it.

14 MS. BAUCUS: Yes. Three times we explained why
15 they're not relevant and the Court of Appeals' decision has
16 not changed, and if there was a clear FDCPA right to it, it
17 would have been in his briefs, but there isn't. Our law
18 hasn't changed. Our position has not changed.

19 THE COURT: No, I understand that.

20 MS. BAUCUS: And, you know, there's got to be a
21 point somewhere where the fishing expedition stops so we can
22 get to the meat of this.

23 THE COURT: Well, I already told you there's no
24 extension on the pre-conference motion, and you've already
25 filed your pre-conference motion request, I think.

1 MS. BAUCUS: Yes, we have.

2 THE COURT: That's not changing.

3 So I'm going to stick to what I said originally, Mr.
4 Westbrook. I understand your point, but I think it's a bit
5 fanciful.

6 MR. WESTBROOK: One more clarification if I could,
7 Your Honor?

8 THE COURT: Yes.

9 MR. WESTBROOK: Not on that issue. I understand
10 your ruling.

11 THE COURT: Okay.

12 MR. WESTBROOK: What about the issue of the
13 privilege log? I haven't seen any privilege log referring to
14 LPS documents, foreclosures, any of that stuff.

15 THE COURT: Well, they say there is one, and part of
16 my problem in these discovery disputes is he said-she said.
17 So if you want to have a discussion with Ms. Lintemuth about
18 that, she told me very clearly as an officer of the Court that
19 those things are on the privilege log, and if you want to
20 refine your motion and challenge the privilege log, but I
21 suggest that you need to meet and confer with her first.

22 MR. WESTBROOK: Your Honor, just to clarify, what
23 Ms. Lintemuth said and what I don't disagree with whatsoever,
24 and I'm not questioning her integrity in any sense, but what
25 she said is there's a privilege log that refers to redactions

1 that were made on the LSAMS notes that were prepared. That is
2 true. There is no privilege log that relates to withheld
3 documents at all, including any of the actual LPS system
4 documents or Remedy or anything else. Any document that was
5 withheld, not produced at all, whether redacted or not,
6 there's no privilege log relating to these things, and I don't
7 think Ms. Lintemuth would disagree with me on that.

8 THE COURT: Is that correct, Ms. Lintemuth?

9 MS. LINTEMUTH: There's -- I don't think we've ever
10 claimed attorney-client privilege for Remedy.

11 THE COURT: No, I'm not talking about Remedy. I'm
12 talking now about --

13 MS. LINTEMUTH: But LPS, so LPS is one system and
14 then LSAMS is the main document that compiles all the systems
15 together.

16 THE COURT: Right.

17 MS. LINTEMUTH: We produced the LSAMS notes, and
18 they have LPS -- we have LPS entries in the LSAMS notes that I
19 redacted --

20 THE COURT: Right.

21 MS. LINTEMUTH: -- and produced a privilege log
22 with. I don't believe they specifically asked for the LPS
23 notes until now, but there may be something in LPS that's not
24 in LSAMS, and to that extent I guess I haven't produced a
25 privilege log for that. Pardon? Because they never asked for

1 it, yeah.

2 THE COURT: Okay. Well, I'm going to stick with my
3 remedy. I'm not going to order that they -- it seems to me
4 they've already produced in the LSAMS what is relevant to
5 these two loans and have claimed privilege for redacted
6 material.

7 MR. WESTBROOK: Your Honor, they've withheld
8 documents, and I think they've said that they've withheld
9 documents --

10 THE COURT: Well --

11 MR. WESTBROOK: -- on the basis of privilege, but
12 not produced a privilege log. This document that they now say
13 is privileged doesn't show up on a privilege log, and neither
14 does anything else that they've withheld, and that's part of
15 the relief that we're requesting through our motion.

16 THE COURT: Okay. But maybe I don't really
17 understand what the LPS system -- how it works because I'm
18 imagining that this is a system that covers maybe 500 loans.

19 MR. WESTBROOK: It probably does, Your Honor. And I
20 tried to find out more about how the LPS system works and how
21 Nationstar uses it, and when I asked the questions about what
22 kind of factual information it contains, I know it contains
23 this document, Exhibit 7 to our motion, but I don't know what
24 other documents it contains because when I asked about it, I
25 got instructions to the witness not to answer.

1 THE COURT: Well, what I'm going to do, then, is
2 order you to prepare a privilege log for those documents that
3 are on the LPS system that have not been identified in your
4 privilege log for the LSAM system that had been withheld on
5 the basis of the privilege.

6 MS. LINTEMUTH: Okay. Thank you, Your Honor.

7 THE COURT: All right. And -- okay. I'm going to
8 also -- no, I'm going to dictate the order myself. I don't
9 want to get another motion that you can't agree on the form of
10 the order.

11 All right. So what kind of time do you think you
12 need to get that done, Ms. Lintemuth?

13 MS. LINTEMUTH: Candidly, Your Honor, I'm not sure
14 with the Remedy system. I know that there's no easy way to
15 print it and that we are going to have to be working with IT
16 people, and it may be one of those things where we have to go
17 through the laborious process of taking a screen shot of every
18 possible screen that you could access in Remedy.

19 THE COURT: Okay.

20 MS. LINTEMUTH: So I don't know how long that would
21 take. I honestly don't. I've never looked through the Remedy
22 system myself. I don't have access to it.

23 THE COURT: Has your pre-motion conference date been
24 set for the --

25 MS. LINTEMUTH: It's in July, Your Honor.

1 THE COURT: Okay. How about if I give you a month?

2 MS. LINTEMUTH: July 8, I believe.

3 THE COURT: Thirty days?

4 MS. LINTEMUTH: We can do 30 days, yes.

5 THE COURT: And Mr. Westbrook, how long do you need,
6 15 days to modify your interrogatory request?

7 MR. WESTBROOK: I think that would be sufficient,
8 Your Honor.

9 THE COURT: And I'm not sure this LPS issue -- as I
10 understand it, you're saying you produced the LSAMS report.
11 You've produced a privilege log for the redacted materials.
12 If I'm limiting the LPS simply to -- okay. I'm going to just
13 say any documents from LPS for which a privilege is being
14 claimed, there should be a privilege log within 30 days.

15 All right. Okay. I'll dictate the order. I hope I
16 wasn't too cranky with you today. I don't like it when things
17 revisit me. It's hard enough to make the decision once.

18 All right. Good day to all of you.

19 MS. BAUCUS: Thank you for your time, Your Honor.

20 (Proceedings concluded at 11:49 a.m.)
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CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

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